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16 **UNITED STATES BANKRUPTCY COURT**
17 **FOR THE EASTERN DISTRICT OF VIRGINIA**
18

19 In re:) Case No. 08-35653-KRH
20 CIRCUIT CITY STORES, INC., et al.) Chapter 11 (jointly administered)
21 Debtors.) **MADCOW INTERNATIONAL GROUP**
22) **LIMITED'S MOTION FOR ALLOWANCE**
23) **AND PAYMENT OF ADMINISTRATIVE**
24) **EXPENSE CLAIM**
25) Date: January 14, 2010
26) Time: 2:00 p.m.
27) Place: United States Bankruptcy Court
28) 701 East Broad Street, Room 5000
Richmond, Virginia 23219

1 NOW COMES MADCOW INTERNATIONAL GROUP LIMITED (“Creditor”), by
2 its counsel, Keesal, Young & Logan, P.C., and states:

3 1. This Court has jurisdiction over this matter pursuant to 28 U.S.C.
4 §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and is a
5 contested matter brought pursuant to §§ 546(c) and 503(b)(9) of the Bankruptcy Code.

6 2. On November 10, 2008 (the “Petition Date”), Circuit City Stores, Inc.
7 (“Debtor”) filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

8 3. Creditor is a manufacturer of various electrical goods and accessories
9 that are used with the Sony Playstation and Nintendo Wii gaming consoles and is a
10 regular supplier of such goods to the Debtor.

11 4. Creditor supplied goods and products to the Debtor during the 20
12 days prior to the bankruptcy, as set forth in Exhibit A, in the amount of \$452,794.40.
13 Creditor also supplied goods and products in the amount of \$441,262.32 during the
14 period of 21 and 45 days prior to bankruptcy, as set forth in Exhibit B.

15 5. Pursuant to 11 U.S.C. § 546(c), the Creditor is entitled to reclamation
16 of these goods. Creditor made demand on Debtor on 25 November, 2008, as evidenced by
17 Exhibit C (the “Reclamation Demand”). Creditor made timely demand and has complied
18 with the requirements of 11 U.S.C. § 546(c). Debtor denied the Reclamation Demand,
19 attached as Exhibit D.

20 6. Debtor had the benefit of use of the products provided by Creditor.
21 Upon information and belief, subsequent to Debtor’s receipt of the Reclamation Demand,
22 Debtor sold the electrical goods and accessories supplied by Creditor.

23 7. There should be no issue that Creditor is entitled to administrative
24 expense priority claims for goods supplied within 20 days before the commencement of
25 this Chapter 11 case pursuant to 11 U.S.C. § 503(b)(9), in the amount of \$452,794.40, as
26 evidenced by Exhibit A.

27 8. Creditor also asserts that it is entitled to administrative expense
28 priority for the balance of the Reclamation Demand in the amount of \$441,262.32, as

1 evidenced by Exhibit B and Declaration of David Wu filed therewith. In re McLouth
2 Steel Products, 213 B.R. 978 (Bankr. E.D. Mich. 1997).

3 9. Former Bankruptcy Code § 546(c)(2) specifically provided that when
4 a seller's reclamation demand for goods delivered within 10 days of bankruptcy was
5 denied, the Creditor was to be granted either a lien or an administrative priority for the
6 value of those goods. The current version of § 546(c) extends the time period for
7 reclamation, but eliminates the recitation of remedies. Instead, § 546(c)(2) directs the
8 creditor to § 503(b)(9), which provides a right to an administrative expense priority for
9 goods delivered 20 days before bankruptcy. But, claims of sellers who supplied products
10 between 20 and 45 days pre-bankruptcy, and to make a timely demand for reclamation,
11 are not specifically addressed. Sellers should be accorded the same protection for goods
12 provided between 21 and 45 days of bankruptcy as they were for goods delivered within
13 10 days under the pre-amendment Bankruptcy Code. Therefore, Creditor is also entitled
14 to an administrative expense priority claim for \$441,262.32, representing the value of
15 goods delivered between 21 and 45 days of Debtors filing for bankruptcy.

16 10. The sale of goods proceeded by the Creditor delivering the goods, as
17 specified in the Invoices, to the vessel that would carry them to the United States. Upon
18 delivery, the Creditor would receive from the vessel a receipt entitled "Forwarder Cargo
19 Receipt," "Cargo Management Systems," or "Cargo receipt" (together referred to as
20 "Forwarder Cargo Receipt"). Copies of the "Forwarder Cargo Receipt" are attached as
21 Exhibit E. The Creditor received such a document with respect to invoice nos.
22 MAD080909A, MAD080917A, MAD080916A, MAD09221B1, MAD080925A,
23 MAD080922E, MAD080922C, MAD080922B, MAD081010C, MAD081015A,
24 MAD081016C, MAD081016D, MAD081014A, MAD081016A, MAD081016F, and
25 MAD081023A on 15, 24 and 25 September and 8, 9, 8, 8, 9, 15, 20, 19, 25, 21, 21, 27 and
26 27 October 2008 respectively.

27 11. On the front page of the "Forwarder Cargo Receipt," written in fine
28 print, is a sentence which states "We [meaning Creditor] *received ... 1 copies of the*

1 following documents which plus 2/3 **original bills of lading will be dispatched to**
2 **the parties at port of discharge at the time of shipment ...**” (our emphasis).¹ A bill
3 of lading is a receipt indicating that a vessel has received goods for shipment but it also
4 serves as constructive title to the goods. As it is expressly noted on the “Forwarder Cargo
5 Receipt” that the vessel will “dispatch” the original bills of lading for the goods to the
6 Debtor at the port of discharge and as the original bills of lading represent title to the
7 goods, only when the Debtor physically receives the original bills of lading does title to
8 the goods pass to the Debtor. Accordingly, only once title to the goods has passed to the
9 Debtor does the Debtor “receive” them for the purposes of 11 U.S.C. § 503(b)(9).

10 12. As the vessels would have only “dispatched” the original bills of
11 lading to the Debtor on or about the same date as the “Forwarder Cargo Receipts” were
12 issued in relation to the Invoices, being on 15, 24 and 25 September and 8, 9, 8, 8, 9, 15,
13 20, 19, 25, 21, 21, 27 and 27 October 2008 respectively, and allowing a reasonable time
14 for the original bills of lading to actually arrive in the Debtor’s possession, it is clear that
15 the Debtor’s only obtained titled to the goods shipped pursuant to the Invoices, and thus
16 “received” them for the purposes of 11 U.S.C. § 503(b)(9), on or after 26 September 2008.

17 13. Based upon the matters set out above, the goods shipped pursuant to
18 the Invoices were received by the Debtor within forty-five days immediately prior to the
19 Petition Date and, as such, Creditor’s items should be given an administrative claim
20 status.

21 14. Creditor therefore requests the Court allow an administrative
22 expense priority claim in the amount of \$894,056.72 as a priority administrative expense
23 of the estate and compel immediate payment thereof.

24 WHEREFORE, Creditor request the Court enter an order allowing

25 ¹ For invoice no. MAD081016A, MAD081021A, AND MAD081016E the receipt received
26 by Creditor had a sentence which stated that “*The original bill of lading of this shipment*
27 *has been released to the above mentioned consignee [Debtor]*”. For invoice no.
28 MAD080916A the receipt received by Creditor had a sentence which stated that “*This*
Cargo receipt is not negotiable and does not constitute title to the goods.”

Creditor's administrative expense claim in the amount of \$894,056.72 in the proposed format attached as Exhibits A and B, and compel the Debtor to pay the administrative expense claim in the amount of \$894,056.72 forthwith and granting such other and further relief as the Court deems appropriate.

DATED: December 9, 2009

MADCOW INTERNATIONAL GROUP LIMITED

/s/ Kevin A. Lake

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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of December, 2009, I caused to be served a true and correct copy of Madcow International Group Limited's Motion for Allowance and Payment of Administrative Expense Claim to all parties receiving notice via ECF and via ECF and/or email on the following:

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